dicts it, but carefully refers only to our war plans "in Europe," it may be inferred that the court was agreed on that point. The disagreement is as to the intent required by the statute. The minority opinion asserts that it required a *primary* and motivating intent to affect the war with *Germany;* the majority assumed that only a subordinate, or constructive, intent to accomplish that end was required. *Debs* v. *U. S.*, 39 Sup. Ct. Rep. 252, in which Justice Holmes himself delivered the convincing opinion, is perhaps distinguishable on the ground that, while Debs' purpose to obstruct the draft was but incidental to his object of eliminating all war, yet it was a deliberately intended effect, rather than a mere recognized consequence. No authority is cited for either opinion, and as the issue is one of legislative intent, it is obvious that precedent would not be pertinent. An analogy, however, to the dissenting conclusion is found in *Rex* v. *Williams,* 1 Leach 529. There the defendant was indicted under a statute prohibiting the cutting, defacing, etc., of wearing-apparel. The evidence showed that the defendant had intended primarily to wound the person of the wearer, although he must have known that in so doing he would cut the clothing of the person. The court held, in view of the particular circumstances under which the statute was passed that a primary intent to deface the clothing was requisite, and dismissed the indictment. Somewhat analogous also are *People* v. *Cotteral,* 18 Johns. (N. Y.) 115 and *Delaney* v. *State,* 41 Tex. 601. On the other hand, in *Reg.* v. *Pembliton,* 12 Cox C. C. 607, a statute was interpreted, as *dictum,* not to require a primary intent to do the particular wrong prohibited. It is well known that some statutes, as interpreted by the courts require no specific intent to break the law at all. *Com.* v. *Boynton,* 2 Allen (Mass.) 160; *Harper* v. *State,* 91 Ark. 422. Under the interpretation given the statute by the majority, those who incited the present coal strike would be liable to 20 years imprisonment, were we still "prosecuting the war" with Germany.

DAMAGES—MEDICAL EXPENSES—FUNERAL EXPENSES.—In an action by an administrator suing for the death of the intestate caused by the wrongful act of the defendant it was *held* that he may recover the medical expenses necessitated by the injuries, but he cannot recover the funeral expenses, the loss to the estate by reason of that expenditure having been prematurely forced on it being the true measure of damages. *Brady* v. *Haw* (Ia., 1919), 174 N. W. 331.

The question whether medical and funeral expenses may be recovered by an administrator suing under the Death Act has often come before the courts and the cases are not in harmony on this point. Since the damages are based solely on the loss due to the death it would seem to follow on principle that medical expenses, being caused not by the death but by the injury should not be recoverable under the Death Act. *Boulter* v. *Webster,* 11 L. T. Rep. (N. S.) 598. It has frequently been held in this country, however, that recovery may be had for medical expenses in actions by a parent as administrator for the death of a minor child. *Rains* v. *St. Louis Railway,* 71 Mo. 164. As to funeral expenses the courts are divided depending on the court's interpretation of the damage clause of the Death Act. The question seems

to have been settled finally in England by the case of *Dalton* v. *Southeastern Ry. Co.*, 4 C. B. (N. S.) 296, where Willes, J., interprets the statute as awarding "compensation for injury by reason of the relative not being alive" or in other words as merely providing a substitute for the earnings of the deceased. Under this construction funeral expenses would seem not to be recoverable and some courts in this country have adopted this view. *Consolidated Tract Co.* v. *Hone*, 60 N. J. L. 444; *Hutchinson* v. *West Jersey Ry. Co.*, 170 Fed. 615. But it is generally held in the United States that funeral expenses are a legitimate element of damages on the ground that they are a financial loss proximately resulting from the death of the deceased. *Secard* v. *Rhinelander Lighting Co.*, 147 Wis. 614. The principal case has apparently rejected both interpretations of the damage clause of the Death Act and has selected a middle ground by adopting the "loss to the estate" of the deceased as the true criterion of the measure of damages. Under this construction the decision of the principal case appears to be sound. See 2 British Ruling Cases 711.

DAMAGES—PROFITS—EARNING CAPACITY.—Plaintiff's husband, a blacksmith employing four or five assistants in his shop, and with a capital of $2,200 invested in his business, was killed through the negligence of the defendant. For some years the deceased had contributed $1,800 annually from the profits of his business to the support of his family; but this amount did not constitute the entire profits of the business. *Held*, this annual payment was proper evidence for the jury to consider as tending to show the deceased's earning capacity. *Baxter* v. *Phila. & Reading R. R. Co.* (Pa., 1919), 107 Atl. 881.

In every case involving loss of earnings, the true measure of damages is the value of the plaintiff's services to the business in which he was engaged. *Gilmore* v. *Phila. Transit Co.*, 253 Pa. 543; *Singer* v. *Martin*, 96 Wash. 231; *Walsh* v. *New York Cent., etc., R. R. Co.*, 204 N. Y. 58. (See note in 37 L. R. A. (N. S.) 1137.) And the value of such services is not measured by the loss of profits of the business. *Masterton* v. *Mount Vernon*, 58 N. Y. 391; *Goodhart* v. *Penna. R. R. Co.*, 177 Pa. 1; *Bierbach* v. *Goodyear Rubber Co.*, 54 Wis. 208. But in cases where the returns from the business are the result solely of the plaintiff's physical and mental exertions, without a substantial investment of capital or the employment of the labor of others, profits may be proved as tending to show the earning power of the plaintiff. *Wallace* v. *Penna. R. R. Co.*, 195 Pa. 127 (boarding house keeper); *Buckman* v. *Phila. & Reading R. R. Co.*, 227 Pa. 277 (farmer and trucker); *McLane* v. *Pittsburg Railways Co.*, 230 Pa. 29 (huckster); *Lund* v. *Tyler*, 115 Ia. 236 (fisherman). The instant case does not fall within the latter classification because the returns of the business were not the result solely of the deceased's enterprise. Nor yet does it violate the general rule, for the court expressly says that if the total profits were taken as a measure of earning power, that would be error. But it allows the jury to estimate damages upon a basis of this sum, derived from the business from which the deceased had his sole source of income, which sum "represents a part of the net earnings